

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GST Telecom California, Inc.
(U-5469-C) and GST Pacific Lightwave, Inc.
(U-5371-U) for Authority to Withdraw the
Provision of Telecommunication Services in
California.

A.01-05-042
(Filed May 18, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
PARTIALLY GRANTING MOTION FOR INTERIM RELIEF**

This ruling partially grants GST Telecom California, Inc.'s and GST Pacific Lightwave, Inc.'s (GST) August 6, 2001, Motion for Interim Relief by preliminarily determining that the requirements of Pub. Util. Code § 2889.5 do not apply to the transfer of GST's customers to Pacific Bell Telephone Company (Pacific) and that GST has satisfied the notice requirements for the transfer of its customers to Pacific.

It is premature to relieve GST of its obligation to serve its customers and to revoke its operating authority. GST has stated that it still is attempting to find a purchaser for its facilities. Since the transfer of GST's customers to Pacific requires Pacific to cross connect to those customers and that transfer may be an interim solution, the Commission cannot revoke GST's operating authority. However, GST and Pacific appear to be moving expeditiously to transfer GST's customers, and it is anticipated that the Commission can consider an order in early November.

Background

GST filed this Application seeking expedited approval to withdraw or discontinue its remaining telecommunications services in California and to cancel its operating authority. GST filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code on May 7, 2000. Time Warner Telecom Inc. (Time Warner) purchased most of GST's assets but did not purchase GST's Mare Island customers and facilities. GST currently provides facilities-based local exchange services to approximately 105 business customers on Mare Island with 600 lines. Pacific currently provides local exchange services to all residential customers and to certain business customers on Mare Island. The City of Vallejo (Vallejo) filed a protest on June 22, 2001, noting that GST serves over 65 businesses and six federal agencies.

GST's motion requests an interim order 1) requiring Pacific and GST to complete the cross-connections that will enable Pacific to provide local exchange services to GST's current customers on Mare Island; (2) waiving the requirements of § 2889.5 in connection with the transfer of the Mare Island customers from GST to Pacific; 3) authorizing GST to discontinue providing local exchange services to Mare Island customers as soon as (a) the cross connections at the GST switching office on Mare Island are complete, (b) each GST Mare Island customer has had at least 30 days notice of the transfer of service to Pacific, and (c) GST has satisfied any remaining requirements for discontinuing service; and 4) revoking GST's certificate of public convenience and necessity (CPCN) once these requirements of GST and Pacific have been met.

On August 16, 2001, Vallejo filed a response in support of GST's Motion. Vallejo suggests the Commission only authorize GST to discontinue service when Pacific has transferred the Mare Island customers to its service. Pacific

filed an opposition to GST's motion. Pacific opposes interim relief for GST, because certain operational steps must occur before Pacific can provide service to GST's customers and GST is still pursuing arrangement to transfer its customers to another carrier. GST replies that the Commission should relieve it of the obligation to provide service to its customers on a customer-by-customer basis, that the steps necessary for Pacific's completion of the cross connects have occurred, that Time Warner intends to cease providing switching services to GST's Mare Island customers as close to October 1, 2001 as practicable, and that it will not sell its assets or customers by August 31, 2001.

Vallejo filed a motion for permission to file a reply to the response of Pacific. The Commission's rules make no provision for the filing of replies by other than moving parties. However, no party has opposed Vallejo's motion and we can consider its points on Pacific's carrier of last resort (COLR) obligations.

No party has requested hearings.

Discussion

GST's motion for interim relief is partially granted. An interim order relieving GST of providing local service by September 30, 2001, is impractical under the circumstances—Pacific needs to complete cross connects before it can provide service and GST may yet sell its assets and customers. Instead, targeting early November for an order that will relieve GST of its obligation to provide local service is realistic.

Both Pacific and Vallejo opposed relieving GST of its obligation to serve its local customers in advance of the customer transfer. In fact, the circumstances of this transfer do not permit an interim order relieving GST of its obligation to serve and revoking its CPCN. Although GST and Pacific are moving expeditiously to transfer GST's customers to Pacific after completion by Pacific of

the required cross connects, Pacific did not believe it could meet GST's September 30, 2001 target date. GST also is attempting to sell its assets and customers. Since the customer transfer to Pacific potentially is an interim solution, an order relieving GST of its obligation to serve must be timed to take effect after the transfer to Pacific has occurred.

In conformance with prior decisions, the third party verification requirements of Pub. Util. Code § 2889.5 do not apply to the customer base transfer from GST to Pacific. (Decision (D.) 97-12-119, 1997 Cal. PUC LEXIS 1146 *2.) Pacific, as the incumbent local exchange carrier on Mare Island, is the COLR and is assuming those obligations. At this time the Commission could only tentatively conclude that Pacific will permanently assume that obligation. As Pacific is completing the cross connections that will enable it to provide service to GST's customers, the Commission need not order Pacific to do so. There is no indication that GST's customers are at risk of having no local service provider or that GST will need switching services long after October 1, 2001.

GST can only withdraw from providing local service after it gives its customers proper advance notice. Recently the Commission found the notice requirements for transfer of a customer base from one carrier to another, adopted in D.97-06-096, were generally applicable to the customer base transfer from a competitive local carrier withdrawing from the market to a COLR. (*Re Verizon Select Services Inc.*, D.01-06-036.) GST has met these notice requirements for transferring its customer base to Pacific. GST has provided written notice 30 days in advance of the transfer and has provided a description of the transfer, the opportunity to switch to a carrier other than Pacific, and a toll-free number for questions.

Conclusion

This ruling preliminarily determines that GST has satisfied the Commission's notice requirements for the transfer of GST's customers to Pacific and that the requirements of § 2889.5 do not apply to the transfer of those customers to Pacific. It is premature to relieve GST of its obligation to serve and to revoke its certificate. Because Pacific and GST are expeditiously working to complete the cross connects and transfer GST's customers to Pacific, the Commission can issue an order in the near future which will relieve GST of its obligation to serve and will revoke its CPCN.

IT IS RULED that GST telecom California, Inc. and GST Pacific Lightwave, Inc.'s Motion for Interim Relief is granted in part as set forth herein.

Dated September 28, 2001, at San Francisco, California.

/s/ JANICE GRAU
Janice Grau
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Partially Granting Motion For Interim Relief on all parties of record in this proceeding or their attorneys of record.

Dated September 28, 2001, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

N O T I C E

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